IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

Writ Petition No. 860 of 2005

Date of decision : 01/07/2005

For the approval of:-

Hon'ble Mr. Justice J.C.S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Dated 01.07.2005

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.860 of 2005

1. Constable 322 C.P. Shivkumar
   S/o Sri Chandra Kuran
   Presently posted at Kotwali Roorkee
   District Haridwar
2. Constable 363 Ajay Kumar
   S/o Sri Jai Pal Singh
   Presently posted at Kotwali Roorkee
   District Haridwar
3. Constable 1108 Devendra Kumar
   S/o Sri Dhoom, Singh
   Presently posted at P.S. Laksar
   District Haridwar
4. Constable 21 AP Satweer
   S/o Sri Dharmpal Singh
   Presently posted at Haridwar
   Police line District Haridwar
5. Constable 51 Vijendra
   S/o Sri Ramesh Chandra
   Presently posted at P.S. Khanpur
   Laksar, District Haridwar
6. Head Constable 26 AP Anil Kumar
   Presently posted at Kotwali, Roorkee
   District Haridwar .....Petitioners

Versus

1. Union of India through
   Its Secretary
   Ministry of Home affairs and others
2. State of Uttaranchal
   Through Principal Secretary Home
   Govt. of Uttaranchal, Dehradun
3. State of U.P. through
   Principal Secretary, U.P. Lucknow
4. Senior Superintendent of Police
   District Haridwar .....Respondents

Hon'ble J. C. S. Rawat, J.

Heard Sri Navneet Kaushik learned counsel for the applicants and Sri Paresh Tripathi learned Standing Counsel.

This writ petition has been filed for issuing of a writ order or direction in the nature of mandamus commanding the respondents to decide the options

submitted by the petitioners for retention of their services in the State of U.P and to relieve them.

Brief facts giving rise to this petition are that the petitioners are Head Constable and Constables in Civil Police posed in the District Haridwar. All the petitioners were appointed in the State of Uttar Pradesh and at the time of creation of State of Uttaranchal, they had given their option for their posing in the State of Uttar Pradesh.

It has been stated in the writ petition that their option had not been considered by the Advisory Committee as yet. Hence, this writ petition has been filed before this Court.

Petitioners have stated in the writ petition that the Central Government has not framed any policy for final allocation and as such the petitioners are suffering due to inaction on the part of the Central Government.

Section 73 of the Uttar Pradesh Reorganisation Act, 2000 provides that every person shall continue to serve provisionally and thereafter the Central Government shall determine the final allocation for service, Section 73 (1), (2), (3) reads as under:-

> *"Provisions relating to other services:-*
>
> *(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and form that day provisionally continue to sere in connection with the affairs of the state of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal.*

Provided that every direction under this Sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State, shall, if he is not already serving therein be made available for serving in the successor State form such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government."

The advisory committee has been constituted under Uttar Pradesh Reorganisation Act 2000 by virtue of Section 76 of the Act. It reads as under:-

"Advisory Committees – The Central Government, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to –

(a) the discharge of any of its functions under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the

provisions of this Part and the proper consideration of any representations made by such persons."

Learned counsel for the petitioners has also referred Section 77 of the Uttar Pradesh Reorganisation Act 2000 with regard to the power of the Central Government, which runs as under:-

"Power of Central Government to give directions – The Central Government may give, such directions to the State Government of Uttar Pradesh and the State of Government of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Government shall comply with such direction."

The learned counsel for the petitioners has invited my attention towards the judgment and decision of the Division Bench of this Court passed in **Writ petition No. 457 of 2003 Udai Pratap Singh Vs. State of U.P.** in which this court has made following observations:-

"Under Section 73(2), the Central Government is given the power to allocate the cadres by general or special order of allotment between the two States. Section 76 provides for setting up of an Advisory Committee to assist the Central Government. By the impugned order dated 11th September, 2002, the Central Government has issued directions allocating the various cadres between the two States. The Central Government has issued these directions pursuant to the authority

given by the legislature to the Central Government.

The Central Government had constituted an Advisory Committee under Section 76. That Committee submitted its report on 28th April 2001/10th May 2001. Their report has been accepted by the Central Government as indicated by letter dated 4th September, 2001 (annesure-4). We may clarify that the report of the Advisory Committee has not been fully accepted by the Central Government."

In another decision of Division Bench of this Court in Writ Petition No. 451 (S/B) of 2003 Narendra Kumar Vs. State of Uttaranchal has also observed as under:-

"Under Section 73 of the U.P. Reorganisation Act, 2000, final allocation of all State Services personnel between the successor States shall be decided by the Central Government. Till date, that decision has not been taken. Therefore, the petition is premature."

The learned counsel for the petitioners has invited my attention towards the decision of this High Court in **Civil W.P. No. 912/2003(S/s)** Head Constable 497 Ram Bool Singh & others Vs. :Union of India & others, in which aforesaid decision have also been indicated. The present writ petition is squarely covered under The **Civil W.P. No.912/2003(S/S).**

In the light of the aforesaid observations, I am of the view that the petitioners should be permitted to make their representations before the Advisory committee of Union of India and their representations along with the options shall be considered by the

Advisory Committee of Union of India for relieving them for the State of Uttar Pradesh.

I accordingly direct that the representations made by the petitioners shall be disposed of within a period of six weeks from the date of production of the certified copy of the order.

With the aforesaid observations, the writ petition is disposed of finally. No order as to costs.

Sd/-

Dated 01.07.2005

LSR